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AMENDED IN ASSEMBLY MAY 23, 2008
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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2487

Introduced by Assembly Member Berg
(Coauthors: Assembly Members Arambula, Eng, *Horton*, and
Jeffries)
(Coauthor: Senator Wiggins)

February 21, 2008

An act to amend, repeal, and add ~~Section~~ *Sections 52.4 and 1708.6* of the Civil Code, *to amend, repeal, and add Section 13950 of, and to add and repeal Section 13963.5 of, the Government Code*, and to amend, repeal, and add Section 19280 of the Revenue and Taxation Code, relating to domestic violence, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, as amended, Berg. Domestic violence: restitution: collection.

(1) Existing law provides that a person who commits the tort of domestic violence, as specified, is liable for damages, including, but not limited to, general, special, and punitive damages. The court is authorized to grant to a prevailing plaintiff equitable relief, an injunction, costs, and any other relief that the court deems proper, including

reasonable attorney's fees. *Existing law also establishes the California Victim Compensation and Government Claims Board.*

This bill would provide that, beginning January 1, 2010, until January 1, 2016, any final judgment awarding damages, costs, or fees under these provisions ~~may be referred by the court to the Franchise Tax Board~~, *no sooner than 90 days after payment of that amount becomes delinquent, be referred by the plaintiff to the California Victim Compensation and Government Claims Board* for collection, as specified. *The bill would also require that all other actions to collect the final judgment referred under that provision cease during the period that collection of the debt is under the jurisdiction of the board. This bill would also, until January 1, 2016, authorize the board to refer the final judgment to the Franchise Tax Board for collection, and to charge a fee for the costs incurred to administer that referral.*

(2) Existing law authorizes the superior court, the county, or the state to refer to the Franchise Tax Board for *the* collection of delinquent fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than \$100, in the aggregate, for criminal offenses, as specified. Existing law provides that restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, if specified conditions are met, including that the government entity has the authority to collect on behalf of the state or the victim.

This bill would provide that, until January 1, 2016, final judgments awarded to victims of *gender violence or domestic violence* that are referred by the ~~court~~ *California Victim Compensation and Government Claims Board* for collection on or after January 1, 2010, under the provisions described in (1) above, may be treated as restitution orders for purposes of referring the final judgment to the Franchise Tax Board for collection. The bill would create the Domestic Violence Tort Claims Collection Fund for the deposit and distribution of final judgment moneys collected pursuant to those provisions. The bill would also authorize an amount not to exceed 10% of the amount collected to be subtracted from the amount deposited in the fund to reimburse the Franchise Tax Board for costs incurred to modify systems to implement the collection of those final judgments.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 52.4 of the Civil Code is amended to read:*

2 52.4. (a) Any person who has been subjected to gender
3 violence may bring a civil action for damages against any
4 responsible party. The plaintiff may seek actual damages,
5 compensatory damages, punitive damages, injunctive relief, any
6 combination of those, or any other appropriate relief. A prevailing
7 plaintiff may also be awarded attorney's fees and costs.

8 (b) An action brought pursuant to this section shall be
9 commenced within three years of the act, or if the victim was a
10 minor when the act occurred, within eight years after the date the
11 plaintiff attains the age of majority or within three years after the
12 date the plaintiff discovers or reasonably should have discovered
13 the psychological injury or illness occurring after the age of
14 majority that was caused by the act, whichever date occurs later.

15 (c) For purposes of this section, "gender violence," is a form of
16 sex discrimination and means any of the following:

17 (1) One or more acts that would constitute a criminal offense
18 under state law that has as an element the use, attempted use, or
19 threatened use of physical force against the person or property of
20 another, committed at least in part based on the gender of the
21 victim, whether or not those acts have resulted in criminal
22 complaints, charges, prosecution, or conviction.

23 (2) A physical intrusion or physical invasion of a sexual nature
24 under coercive conditions, whether or not those acts have resulted
25 in criminal complaints, charges, prosecution, or conviction.

26 (d) Notwithstanding any other laws that may establish the
27 liability of an employer for the acts of an employee, this section
28 does not establish any civil liability of a person because of his or
29 her status as an employer, unless the employer personally
30 committed an act of gender violence.

31 (e) *Beginning on January 1, 2010, any final judgment awarding*
32 *damages or costs under this section may be referred by the plaintiff*
33 *to the California Victim Compensation and Government Claims*
34 *Board for collection no sooner than 90 days after the payment of*
35 *the award becomes delinquent.*

36 (f) *This section shall remain in effect only until January 1, 2016,*
37 *and as of that date is repealed, unless a later enacted statute that*
38 *is enacted before January 1, 2016, deletes or extends that date.*

1 *SEC. 2. Section 52.4 is added to the Civil Code, to read:*

2 52.4. (a) Any person who has been subjected to gender
3 violence may bring a civil action for damages against any
4 responsible party. The plaintiff may seek actual damages,
5 compensatory damages, punitive damages, injunctive relief, any
6 combination of those, or any other appropriate relief. A prevailing
7 plaintiff may also be awarded attorney's fees and costs.

8 (b) An action brought pursuant to this section shall be
9 commenced within three years of the act, or if the victim was a
10 minor when the act occurred, within eight years after the date the
11 plaintiff attains the age of majority or within three years after the
12 date the plaintiff discovers or reasonably should have discovered
13 the psychological injury or illness occurring after the age of
14 majority that was caused by the act, whichever date occurs later.

15 (c) For purposes of this section, "gender violence" is a form
16 of sex discrimination and means any of the following:

17 (1) One or more acts that would constitute a criminal offense
18 under state law that has as an element the use, attempted use, or
19 threatened use of physical force against the person or property of
20 another, committed, at least in part, based on the gender of the
21 victim, whether or not those acts have resulted in criminal
22 complaints, charges, prosecution, or conviction.

23 (2) A physical intrusion or physical invasion of a sexual nature
24 under coercive conditions, whether or not those acts have resulted
25 in criminal complaints, charges, prosecution, or conviction.

26 (d) Notwithstanding any other laws that may establish the
27 liability of an employer for the acts of an employee, this section
28 does not establish any civil liability of a person because of his or
29 her status as an employer, unless the employer personally
30 committed an act of gender violence.

31 (e) This section shall become operative on January 1, 2016.

32 **SECTION 1.**

33 *SEC. 3. Section 1708.6 of the Civil Code is amended to read:*

34 1708.6. (a) A person is liable for the tort of domestic violence
35 if the plaintiff proves both of the following elements:

36 (1) The infliction of injury upon the plaintiff resulting from
37 abuse, as defined in subdivision (a) of Section 13700 of the Penal
38 Code.

1 (2) The abuse was committed by the defendant, a person having
2 a relationship with the plaintiff as defined in subdivision (b) of
3 Section 13700 of the Penal Code.

4 (b) A person who commits an act of domestic violence upon
5 another is liable to that person for damages, including, but not
6 limited to, general damages, special damages, and punitive
7 damages pursuant to Section 3294.

8 (c) The court, in an action pursuant to this section, may grant
9 to a prevailing plaintiff equitable relief, an injunction, costs, and
10 any other relief that the court deems proper, including reasonable
11 attorney's fees.

12 (d) The rights and remedies provided in this section are in
13 addition to any other rights and remedies provided by law.

14 (e) The time for commencement of an action under this section
15 is governed by Section 340.15 of the Code of Civil Procedure.

16 (f) Beginning January 1, 2010, any final judgment awarding
17 damages, costs, or fees under this section may be referred by the
18 court to the Franchise Tax Board for collection pursuant to Article
19 5.5 (commencing with Section 19280) of Chapter 5 of Part 10.2
20 of Division 2 of the Revenue and Taxation Code at the time the
21 judgment is entered or upon petition by the plaintiff, *no sooner*
22 *than 90 days after payment of that amount becomes delinquent,*
23 *be referred by the plaintiff to the California Victim Compensation*
24 *and Government Claims Board for collection.*

25 (g) This section shall remain in effect only until January 1, 2016,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2016, deletes or extends that date.

28 ~~SEC. 2.~~

29 *SEC. 4.* Section 1708.6 is added to the Civil Code, to read:

30 1708.6. (a) A person is liable for the tort of domestic violence
31 if the plaintiff proves both of the following elements:

32 (1) The infliction of injury upon the plaintiff resulting from
33 abuse, as defined in subdivision (a) of Section 13700 of the Penal
34 Code.

35 (2) The abuse was committed by the defendant, a person having
36 a relationship with the plaintiff as defined in subdivision (b) of
37 Section 13700 of the Penal Code.

38 (b) A person who commits an act of domestic violence upon
39 another is liable to that person for damages, including, but not

1 limited to, general damages, special damages, and punitive
2 damages pursuant to Section 3294.

3 (c) The court, in an action pursuant to this section, may grant
4 to a prevailing plaintiff equitable relief, an injunction, costs, and
5 any other relief that the court deems proper, including reasonable
6 attorney's fees.

7 (d) The rights and remedies provided in this section are in
8 addition to any other rights and remedies provided by law.

9 (e) The time for commencement of an action under this section
10 is governed by Section 340.15 of the Code of Civil Procedure.

11 (f) This section shall become operative on January 1, 2016.

12 *SEC. 5. Section 13950 of the Government Code is amended to*
13 *read:*

14 13950. (a) The Legislature finds and declares that it is in the
15 public interest to assist residents of the State of California in
16 obtaining compensation for the pecuniary losses they suffer as a
17 direct result of criminal acts.

18 (b) This chapter shall govern the procedure by which crime
19 victims may obtain compensation from the Restitution Fund, *and*
20 *the referral of final judgments awarded pursuant to Sections 52.4*
21 *and 1708.6 of the Civil Code to the board for collection.*

22 (c) Any reference in statute or regulations to Article 1
23 (commencing with Section 13959) of Chapter 5, as it read on
24 December 31, 2002, shall be construed to refer to this chapter.

25 (d) *This section shall remain in effect only until January 1, 2016,*
26 *and as of that date is repealed, unless a later enacted statute, that*
27 *is enacted before January 1, 2016, deletes or extends that date.*

28 *SEC. 6. Section 13950 is added to the Government Code, to*
29 *read:*

30 13950. (a) The Legislature finds and declares that it is in the
31 public interest to assist residents of the State of California in
32 obtaining compensation for the pecuniary losses they suffer as a
33 direct result of criminal acts.

34 (b) This chapter shall govern the procedure by which crime
35 victims may obtain compensation from the Restitution Fund.

36 (c) Any reference in statute or regulations to Article 1
37 (commencing with Section 13959) of Chapter 5, as it read on
38 December 31, 2002, shall be construed to refer to this chapter.

39 (d) This section shall become operative on January 1, 2016.

1 *SEC. 7. Section 13963.5 is added to the Government Code, to*
2 *read:*

3 *13963.5. (a) Beginning January 1, 2010, a victim of domestic*
4 *violence who is awarded a final judgment of damages, costs, or*
5 *fees under Section 52.4 or Section 1708.6 of the Civil Code may,*
6 *no sooner than 90 days after payment of that amount becomes*
7 *delinquent, refer the final judgment awarded under that section*
8 *to the board for collection.*

9 *(b) All other actions to collect the final judgment referred under*
10 *subdivision (a) shall cease during the period that collection of the*
11 *debt is under the jurisdiction of the board.*

12 *(c) The board may refer the final judgment to the Franchise*
13 *Tax Board for collection.*

14 *(1) The board may charge a fee for the costs incurred to*
15 *administer the referral of the final judgment to the Franchise Tax*
16 *Board for collection. The board shall add to the amount of the*
17 *final judgment referred to the Franchise Tax Board for collection*
18 *an amount that equals the board's costs to administer the referral.*

19 *(2) In addition to the amounts added pursuant to paragraph*
20 *(1), the board shall add to the amount of the final judgment*
21 *referred to the Franchise Tax Board for collection an amount that*
22 *equals the following costs of the Franchise Tax Board:*

23 *(A) Costs to collect the final judgment, as authorized by Section*
24 *19282 of the Revenue and Taxation Code.*

25 *(B) System modification costs, as authorized by subdivision (h)*
26 *of Section 19280 of the Revenue and Taxation Code.*

27 *(d) This section shall remain in effect only until January 1, 2016,*
28 *and as of that date is repealed, unless a later enacted statute, that*
29 *is enacted before January 1, 2016, deletes or extends that date.*

30 ~~SEC. 3.~~

31 *SEC. 8. Section 19280 of the Revenue and Taxation Code is*
32 *amended to read:*

33 *19280. (a) (1) Fines, state or local penalties, forfeitures,*
34 *restitution fines, restitution orders, or any other amounts imposed*
35 *by a superior court of the State of California upon a person or any*
36 *other entity that are due and payable in an amount totaling no less*
37 *than one hundred dollars (\$100), in the aggregate, for criminal*
38 *offenses, including all offenses involving a violation of the Vehicle*
39 *Code, may, no sooner than 90 days after payment of that amount*
40 *becomes delinquent, be referred by the superior court, the county,*

1 or the state to the Franchise Tax Board for collection under
2 guidelines prescribed by the Franchise Tax Board.

3 (2) For purposes of this subdivision:

4 (A) The amounts referred by the superior court, the county, or
5 state under this section may include any amounts that a government
6 entity may add to the court-imposed obligation as a result of the
7 underlying offense, trial, or conviction. For purposes of this article,
8 those amounts shall be deemed to be imposed by the court.

9 (B) Restitution orders may be referred to the Franchise Tax
10 Board only by a government entity, as agreed upon by the
11 Franchise Tax Board, provided that all of the following apply:

12 (i) The government entity has the authority to collect on behalf
13 of the state or the victim.

14 (ii) The government entity shall be responsible for distributing
15 the restitution order collections, as appropriate.

16 (iii) The government entity shall ensure, in making the referrals
17 and distributions, that it coordinates with any other related
18 collection activities that may occur by superior courts, counties,
19 or other state agencies.

20 (iv) The government entity shall ensure compliance with laws
21 relating to the reimbursement of the State Restitution Fund.

22 (C) The Franchise Tax Board shall establish criteria for referral,
23 which shall include setting forth a minimum dollar amount subject
24 to referral and collection.

25 (b) The Franchise Tax Board, in conjunction with the Judicial
26 Council, shall seek whatever additional resources are needed to
27 accept referrals from all 58 counties or superior courts.

28 (c) Upon written notice to the debtor from the Franchise Tax
29 Board, any amount referred to the Franchise Tax Board under
30 subdivision (a) and any interest thereon, including any interest on
31 the amount referred under subdivision (a) that accrued prior to the
32 date of referral, shall be treated as final and due and payable to the
33 State of California, and shall be collected from the debtor by the
34 Franchise Tax Board in any manner authorized under the law for
35 collection of a delinquent personal income tax liability, including,
36 but not limited to, issuance of an order and levy under Article 4
37 (commencing with Section 706.070) of Chapter 5 of Division 2
38 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
39 provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(h) (1) Final judgments awarded to *victims of gender violence under Section 52.4 of the Civil Code or to victims of domestic violence under Section 1708.6 of the Civil Code* that are referred by the ~~court~~ *California Victim Compensation and Government Claims Board* for collection may be collected in the same manner as restitution orders, except as provided in this subdivision.

(2) (A) There is hereby created the *Gender or Domestic Violence Tort Claims Collection Fund* for the deposit and distribution of final judgment moneys collected pursuant to ~~Section~~

1 *Sections 52.4 and 1708.6* of the Civil Code. Notwithstanding
2 Section 13340 of the Government Code, the fund is continuously
3 appropriated for distribution to satisfy final judgments under
4 ~~Section~~ *Sections 52.4 and 1708.6* of the Civil Code, and as
5 otherwise authorized by this subdivision. The fund shall be
6 administered by the Franchise Tax Board.

7 (B) Until the determination described in subparagraph (C), an
8 amount not to exceed 10 percent of the amount collected with
9 respect to a final judgment under ~~Section~~ *Sections 52.4 and 1708.6*
10 of the Civil Code shall be subtracted from the amount deposited
11 in the Domestic Violence Tort Claims Collection Fund to reimburse
12 the Franchise Tax Board for costs incurred to modify systems to
13 implement the collection of final judgments under ~~Section~~ *Sections*
14 *52.4 and 1708.6* of the Civil Code, as authorized by provisions of
15 the act adding this paragraph. The recovery of system modification
16 costs authorized by this paragraph is in addition to the
17 reimbursement of the actual costs of collection incurred by the
18 Franchise Tax Board authorized by Section 19282.

19 (C) When the Controller determines that the General Fund has
20 been fully reimbursed for the funds expended to cover the costs
21 incurred by the Franchise Tax Board to modify systems to
22 implement the collection of final judgments under ~~Section~~ *Sections*
23 *52.4 and 1708.6* of the Civil Code in accordance with paragraph
24 (1) of this subdivision, the subtraction prescribed in subparagraph
25 (B) shall cease.

26 (3) If a final judgment under ~~Section~~ *Sections 52.4 and 1708.6*
27 of the Civil Code and other amounts imposed by a superior court
28 described in subdivision (a) are referred to the Franchise Tax Board
29 for collection from the same person, the Franchise Tax Board shall
30 stay collection action on the final judgment under ~~Section~~ *Sections*
31 *52.4 and 1708.6* of the Civil Code until other amounts imposed
32 by a superior court have been fully satisfied.

33 (i) This section shall remain in effect only until January 1, 2016,
34 and as of that date is repealed, unless a later enacted statute, that
35 is enacted before January 1, 2016, deletes or extends that date.

36 ~~SEC. 4.~~

37 *SEC. 9.* Section 19280 is added to the Revenue and Taxation
38 Code, to read:

39 19280. (a) (1) Fines, state or local penalties, forfeitures,
40 restitution fines, restitution orders, or any other amounts imposed

1 by a superior court of the State of California upon a person or any
2 other entity that are due and payable in an amount totaling no less
3 than one hundred dollars (\$100), in the aggregate, for criminal
4 offenses, including all offenses involving a violation of the Vehicle
5 Code, may, no sooner than 90 days after payment of that amount
6 becomes delinquent, be referred by the superior court, the county,
7 or the state to the Franchise Tax Board for collection under
8 guidelines prescribed by the Franchise Tax Board.

9 (2) For purposes of this subdivision:

10 (A) The amounts referred by the superior court, the county, or
11 state under this section may include any amounts that a government
12 entity may add to the court-imposed obligation as a result of the
13 underlying offense, trial, or conviction. For purposes of this article,
14 those amounts shall be deemed to be imposed by the court.

15 (B) Restitution orders may be referred to the Franchise Tax
16 Board only by a government entity, as agreed upon by the
17 Franchise Tax Board, provided that all of the following apply:

18 (i) The government entity has the authority to collect on behalf
19 of the state or the victim.

20 (ii) The government entity shall be responsible for distributing
21 the restitution order collections, as appropriate.

22 (iii) The government entity shall ensure, in making the referrals
23 and distributions, that it coordinates with any other related
24 collection activities that may occur by superior courts, counties,
25 or other state agencies.

26 (iv) The government entity shall ensure compliance with laws
27 relating to the reimbursement of the State Restitution Fund.

28 (C) The Franchise Tax Board shall establish criteria for referral,
29 which shall include setting forth a minimum dollar amount subject
30 to referral and collection.

31 (b) The Franchise Tax Board, in conjunction with the Judicial
32 Council, shall seek whatever additional resources are needed to
33 accept referrals from all 58 counties or superior courts.

34 (c) Upon written notice to the debtor from the Franchise Tax
35 Board, any amount referred to the Franchise Tax Board under
36 subdivision (a) and any interest thereon, including any interest on
37 the amount referred under subdivision (a) that accrued prior to the
38 date of referral, shall be treated as final and due and payable to the
39 State of California, and shall be collected from the debtor by the
40 Franchise Tax Board in any manner authorized under the law for

1 collection of a delinquent personal income tax liability, including,
2 but not limited to, issuance of an order and levy under Article 4
3 (commencing with Section 706.070) of Chapter 5 of Division 2
4 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
5 provided for earnings withholding orders for taxes.

6 (d) (1) Part 10 (commencing with Section 17001), this part,
7 Part 10.7 (commencing with Section 21001), and Part 11
8 (commencing with Section 23001) shall apply to amounts referred
9 under this article in the same manner and with the same force and
10 effect and to the full extent as if the language of those laws had
11 been incorporated in full into this article, except to the extent that
12 any provision is either inconsistent with this article or is not
13 relevant to this article.

14 (2) Any information, information sources, or enforcement
15 remedies and capabilities available to the court or the state referring
16 to the amount due described in subdivision (a), shall be available
17 to the Franchise Tax Board to be used in conjunction with, or
18 independent of, the information, information sources, or remedies
19 and capabilities available to the Franchise Tax Board for purposes
20 of administering Part 10 (commencing with Section 17001), this
21 part, Part 10.7 (commencing with Section 21001), or Part 11
22 (commencing with Section 23001).

23 (e) The activities required to implement and administer this part
24 shall not interfere with the primary mission of the Franchise Tax
25 Board to administer Part 10 (commencing with Section 17001)
26 and Part 11 (commencing with Section 23001).

27 (f) For amounts referred for collection under subdivision (a),
28 interest shall accrue at the greater of the rate applicable to the
29 amount due being collected or the rate provided under Section
30 19521. When notice of the amount due includes interest and is
31 mailed to the debtor and the amount is paid within 15 days after
32 the date of notice, interest shall not be imposed for the period after
33 the date of notice.

34 (g) In no event shall a collection under this article be construed
35 as a payment of income taxes imposed under Part 10 (commencing
36 with Section 17001) or Part 11 (commencing with Section 23001).

37 (h) This section shall become operative on January 1, 2016.

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